CRIMINAL APPEAL NO. 346 AND 444/04

The Appellant in Crl. Appeal No. 346/04 / Accused No.2 Viz. Mani @ Manikandan was directed to be released in bail as per the order of this Court dated 21.3.2005 and made in Crl.MP.1676/05.

The Appellant in Crl.Appeal No. 444/04 / Accused No.3 Viz. Kanaghu @ Kanagaraj was directed to be released on bail as per the order of this Court dated 2.4.2004 and made in Crl.MP. No. 3585/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2006

CORAM

THE HONOURABLE MR.JUSTICE R.BALASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.NOS.346 AND 444 OF 2004 AND 721 OF 2006

Mani @ Manikandan .. Appellant in CA.No.346 of 2004 (Accused No.2)

Kanaghu @ Kanagaraj .. Appellant in CA.No.444 of 2004 (Accused No.3)

Anandan .. Appellant in CA.No.721 of 2006 (Accused No.1)

Vs.

State by
the Inspector of Police,
B-6, Tambaram Police Station,
Chengalpet District
(Crime No.487 of 2002) .. Respondent in all the appeals (Complainant)

These criminal appeals are preferred under Section 374(2) Cr.P.C against the judgment of the learned Principal Sessions Judge, Chengalpattu made in S.C.No.210 of 2003, dated 29.01.2004.

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For Appellants : Mr.V.Parthiban for Appellant/ A-2
in CA No.346 of 2004

Mr.Kishore Kumar
for Mr.T.Sudhanthiram for Appellant/ A-3
in CA No.444 of 2004

Mr.R.Sankarasubbu for Appellant/ A-1
in CA No.721 of 2006

For Respondent : Mr.N.R.Elango, A.P.P.

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COMMON JUDGMENT

(The judgment of the Court was made by M.CHOCKALINGAM, J.)

This judgment shall govern these three appeals, namely C.A.Nos.346 and 444 of 2004 and 721 of 2006. C.A.No.346 of 2004 is brought forth by A-2, C.A.No.444 of 2004 is preferred by A-3 and C.A.No.721 of 2006 is filed by A-1.

2.The appellants, three in number, have brought forth these appeals challenging the judgment of the learned Principal Sessions Judge, Chengalpattu made in S.C.No.210 of 2003, whereby they stood charged, tried and found guilty under Section 302 r/w S.34 IPC and awarded with life imprisonment each and to pay a fine of Rs.1000/- each, in default to undergo 6 months rigourous imprisonment.

3.The short facts necessary for the disposal of these appeals can be stated thus:

a)P.W.1 is the son, P.W.2 is the wife and P.W.3 is the daughter of one Murugesan, since deceased in the incident. He was eking his livelihood by pulling rickshaw. P.W.9 married one Vijayalakshmi, who is the sister of the first accused. There was disturbance in the matrimony and they were living apart. P.W.9 was in talking terms with P.W.3, the daughter of the deceased. On coming to know about the same, the first accused repeatedly informed to the deceased and his family members that the same should be stopped and if not, he would do away the family. But, P.W.9 and P.W.3 continued to do so. While the matter stood thus, on 6.7.2002 at about 2.00 a.m., the accused came to the house of the deceased and informed him that they wanted to talk with him and they took the deceased out. The first accused attacked the deceased with a stick, while the second accused took a knife and stabbed the deceased on his face. The third accused also attacked the deceased with a stick. This was witnessed not only by P.W.1, but also by P.Ws.2 and 3. The accused ran away from the place of occurrence.

b)P.W.1 and others took the deceased to the hospital, where they

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were informed that the deceased died. P.W.1 proceeded to the respondent police station, where P.W.12, the Inspector was on duty and gave Ex.P.1, the complaint. On the strength of the same, a case came to be registered in Crime No.477 of 2002 under Section 302 IPC. Ex.P.13, the express first information report was despatched to the Court.

c)P.W.12 proceeded to the place of occurrence, made an inspection in the presence of the witnesses and prepared Ex.P.2, the observation mahazar and Ex.P.14, the rough sketch. He has recovered material objects from the place of occurrence and he recorded the statement of witnesses. He proceeded to the hospital and conducted inquest on the dead body of the deceased in the presence of the witnesses and panchayatdars and prepared Ex.P.15, the inquest report. Following the same, the dead body of the deceased was sent for the purpose of autopsy.

d)P.W.8, the Doctor attached to the Government Hospital, Tambaram has conducted autopsy on the dead body of the deceased and has issued Ex.P.7, the post-mortem certificate, wherein she has opined that the deceased would appear to have died of shock and haemorrhage due to the injuries sustained.

e)Pending investigation, the Investigating Officer has arrested all the accused. They volunteered to give confessional statements, which were recorded in the presence of witnesses. The admissible part of the same were marked as Exs.P.9 to P.11 respectively. Pursuant to the confessional statements, they produced M.Os.1 to 3, which were recovered in the presence of witnesses under a cover of mahazar. All the accused were sent for judicial remand. All the M.Os recovered from the place of occurrence, from the dead body of the deceased and the M.Os recovered from the accused pursuant to the confessional statements were sent for chemical analysis by the Forensic Science Department pursuant to the requisition made by the Investigating Officer to the Judicial Magistrate concerned. Ex.P.18, the Chemical Analyst's report and Ex.P.19, the Serologist's report were received by the Court. On completion of the investigation, the Investigating Officer has filed the final report.

4.The case was committed to the Court of Sessions and necessary charges were framed. In order to substantiate the charges, the prosecution has examined 12 witnesses and relied on 19 exhibits and 8 M.Os. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C procedurally as to the incriminating circumstances found in the evidence of prosecution witnesses, which they flatly denied as false. No defence witness was examined. On completion of the evidence, the trial court heard the arguments advanced and also scrutinised the materials available and took a view that the prosecution has proved the case beyond reasonable doubt and found all the accused guilty as per the charge and awarded life imprisonment along with a fine and default sentence, which is the subject matter of challenge before this Court.

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5.Assailing the judgment of the lower court, the learned counsel appearing for the appellants would submit that in the instant case, all the infirmities and lacuna found in the prosecution case were highlighted before the lower court, but they all escaped from the vision of the lower court; that in the instant case, the prosecution rested its case on the evidence of P.Ws.1 to 3; that the materials would indicate that no one of the witnesses could have seen the occurrence at all; that the Ex.P.1, report, would clearly indicate that P.W.1 could not have witnessed the occurrence; that P.Ws.2 and 3 have fairly spoken the fact that it was the information passed on to them and thus, it would be quite clear that P.Ws.1 to 3 could not have seen the occurrence at all; that the recovery was nothing, but an introduction to suit the prosecution case; that apart from that in the instant case, what was proved by the prosecution was that the dead body was found and following inquest, it was subjected to post-mortem and the deceased died out of shock and haemorrhage due to the injuries sustained and that except this, there was no material available to connect the accused with the crime and hence, the appellants are entitled for acquittal in the hands of this Court.

6.Heard the learned Additional Public Prosecutor on the above contentions.

7.The Court has paid its anxious consideration on the submissions made.

8.It is not the fact in controversy that one Murugesan, the father of P.Ws.1 and 3 and the husband of P.W.2 was done to death in an incident that took place on 6.7.2002 at night hours. Now, it could be seen that the prosecution, in order to establish the crime, relied on the evidence of three eyewitnesses. The earliest document which came into existence was Ex.P.1, which was actually a report given by P.W.1 to P.W.12, the Inspector of Police. Pursuant to the same, a case came to be registered in Crime No.477 of 2002 directly under Section 302 IPC against the accused. A perusal of Ex.P.1, report would clearly indicate that on the date of occurrence at 2.00 a.m., A-1 and A-2 came to the house of P.W.1 and took his father and when his father did not return to home, at about 4.00 a.m., he went to the river bank and found the dead body of his father and then, he went to the police station. Before the Court, P.W.1 has stated that he saw the accused persons, three in number, and they attacked his father. This would go to show that this is the subsequent development. The averments found in Ex.P.1 would be suffice to disbelieve his evidence. P.Ws.2 and 3 have stated that they were informed about the occurrence by P.W.1 and thus, they have not witnessed the occurrence.

9.In a given case, what was available for the prosecution was that at about 2.00 a.m. on the date of occurrence, A-1 and A-2 came and took the deceased. At this juncture, it is pertinent to point

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out that in the past, P.Ws.1 to 3 and the deceased were warned by the accused. If to be so, it is highly improbable and impossible that P.W.1 to 3 allowed the said Murugesan to go along with the accused during night hours. It is not the case of P.W.1 that any one of his family members prevented him or accompanied him, but they went for bed. The evidence of P.Ws.1 to 3, when scrutinised carefully, does not stand the test. Hence, if their evidence is rejected, the prosecution case is destroyed. What is available is only the recovery part. It is needless to say that in a case like this, the mere recovery of weapon of crime, by itself, will not be sufficient to hold or to record a finding that the accused were the assailants. Apart from that, in the instant case, the prosecution has proved the case only to an extent that the deceased died out of homicidal violence.

10.Under these circumstances, the lower court, without considering all these aspects and materials available, has erroneously observed that P.W.1 was the eyewitness to the occurrence. Considering all these things, the Court is of the considered opinion that it is a case where the evidence is lacking. It can even be stated that there is thoroughly bereft of evidence and hence, they are entitled for acquittal.

11.In the result, the judgment of conviction and sentence imposed by the lower court on the appellants is set aside and they are acquitted of the charges levelled against them. A-1 is directed to be released forthwith unless his presence is required in connection with any other case. The bail bond, if any executed by A-2 and A-3, shall stand terminated. The fine amounts, if any paid by the appellants, shall be ordered to be refunded to them. Accordingly, the three criminal appeals are allowed.

vvk

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1.The Principal Sessions Judge, Chengalpattu.

2.The Judicial Magistrate, Tambaram.

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3. -do- through the Chief Judicial Magistrate, Tambaram.

4.The District Collector, Chengalpattu.

5.The Director General of Police, Chennai.

6.The Public Prosecutor, High Court, Madras-104.

7.The Superintendent, Central Prison, Cuddalore.

8.The Superintendent, Central Prison, Chennai.

9.The Inspector of Police, B-6, Tambaram Police Station,
Chengalpet District

ONE CC TO MR.T. SUDANTHIRAM, ADVOCATE SR 50608

C.A.NOS.346 & 444 OF 2004
AND 721 OF 2006

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